

SECOND REGULAR SESSION

# SENATE BILL NO. 1293

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATORS BRAY, KENNEDY, STOLL, COLEMAN AND DAYS.

Read 1st time February 24, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4366S.011

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## AN ACT

To repeal sections 287.141, 287.148, 287.149, 287.160, 287.170, 287.180, and 287.780, RSMo, and to enact in lieu thereof seven new sections relating to workers' compensation benefits.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 287.141, 287.148, 287.149, 287.160, 287.170, 287.180, and 287.780, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 287.141, 287.148, 287.149, 287.160, 287.170, 287.180, and 287.780, to read as follows:

287.141. 1. The purpose of this section is to restore the injured person as soon as possible and as nearly as possible to a condition of self-support and maintenance as an able-bodied worker by physical rehabilitation. The provisions of this chapter relating to physical rehabilitation shall be under the control of and administered by the director of the division of workers' compensation. The division of workers' compensation shall make such rules and regulations as may be necessary to carry out the purposes of this section, subject to the approval of the labor and industrial relations commission of Missouri.

2. The division of workers' compensation shall continuously study the problems of physical rehabilitation and shall investigate all rehabilitation facilities, both private and public, and upon such investigation shall approve as qualified all such facilities, institutions and physicians as are capable of rendering competent physical rehabilitation service for seriously injured industrial workers. Rehabilitation facilities shall include medical, surgical, hospital and physical restoration services. No facility or institution shall be considered as qualified unless it is equipped to provide physical rehabilitation services for persons suffering either from some specialized type of disability or general type of disability within the field of industrial injury, and unless such facility or institution is operated under the supervision of a physician qualified to render physical rehabilitation service and is staffed with trained

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

and qualified personnel and has received a certificate of qualification from the division of workers' compensation. No physician shall be considered as qualified unless he has had the experience prescribed by the division.

3. In any case of serious injury involving disability following the period of rendition of medical aid as provided by subsection 1 of section 287.140, where physical rehabilitation is necessary [if the employer or insurer shall offer such physical rehabilitation to the injured employee and such physical rehabilitation is accepted by the employee, then in such case] the director of the division of workers' compensation shall be immediately notified thereof and thereupon enter [his] **the director's** approval to such effect, and the director of the division of workers' compensation shall requisition the payment of [forty dollars] **a sum equal to fifty percent of the applicable temporary-total disability compensation rate** per week benefit from the second injury fund in the state treasury to be paid to the employee while [he] **the employee** is actually being rehabilitated, and shall immediately notify the state treasurer thereof by furnishing [him] **the state treasurer** with a copy of [his] **the director's approval** order. But in no case shall the period of physical rehabilitation extend beyond twenty weeks except in unusual cases and then only by a special order of the division of workers' compensation for such additional period as the division may authorize.

4. [In all cases where physical rehabilitation is offered and accepted or ordered by the division, the employer or insurer shall have the right to select any physician, facility, or institution that has been found qualified by the division of workers' compensation as above set forth.

5.] If the parties disagree as to such physical rehabilitation treatment, where such treatment appears necessary, then either the employee, the employer, or insurer may file a request with the division of workers' compensation for an order for physical rehabilitation and the director of the division shall hear the parties within ten days after the filing of the request. The director of the division shall forthwith notify the parties of the time and place of the hearing, and the hearing shall be held at a place to be designated at the discretion of the division. The director of the division may conduct such hearing or [he] may direct one of the administrative law judges to conduct same. Such hearing shall be informal in all respects. The director of the division shall, after considering all evidence at such hearing, within ten days make [his] **an** order in the matter, either denying such request or ordering the employer or insurer within a reasonable time, to furnish physical rehabilitation, and ordering the employee to accept the same, at the expense of the employer or insurer. When the order requires physical rehabilitation, it shall also include an order to requisition the payment of [forty dollars] **a sum equal to fifty percent of the applicable temporary-total disability compensation rate** per week out of the second injury fund in the state treasury to the injured employee during such time as such employee is actually receiving physical rehabilitation.

[6.] 5. In every case where physical rehabilitation shall be ordered, the director of the division may[, in his discretion,] order the employer or insurer to furnish transportation to the injured employee to such rehabilitation facility or institution.

[7.] 6. As used in this section, the term "physical rehabilitation" shall be deemed to include medical, surgical and hospital treatment in the same respect as required to be furnished under subsection 1 of section 287.140.

[8.] 7. An appeal from any order of the division of workers' compensation hereby created to the appellate court may be taken and governed in all respects in the same manner as appeals in workers' compensation cases generally under section 287.495.

**8. An employee shall be entitled to continuous employment with the same employer to the occupation engaged in when the injury was sustained, or the injury or disease caused the employee to lose time from work, at the employee's option, when released to do so by the employee's physician as being able to perform the essential functions of such occupation, without reduction in the level of wages and benefits, and without limitation as to the length of time. No Family and Medical Leave Act entitlements or restoration rights, or similar federal or state laws relating to such topic, shall be reduced while the employee is unable to work as a result of an occupation injury or illness.**

287.148. 1. Within [one hundred and twenty days of the date of the injury] **sixty days from the date of the employee's application for vocational rehabilitation services**, the [employer] **director** shall determine whether the injured worker has sustained an injury that results in a loss of suitable, gainful employment. If the [employer] **director** can determine that a loss of suitable, gainful employment has occurred, the **director shall order the** employer [may] **to** retain the services of a rehabilitation practitioner or a rehabilitation provider. A written determination of this finding shall be sent to the division of workers' compensation with copies to the employer, insurer, employee and their representatives on forms approved by the division. In the event that a determination cannot be established, within [the one hundred and twenty days of the date of injury, due to the extent of the injury] **sixty days from the date of the employee's application for vocational rehabilitation services**, the employer shall, as regulated by the division of workers' compensation, continue to review the status of the injured employee at appropriate intervals to determine [his] **the employee's** loss of suitable, gainful employment. If a rehabilitation practitioner or provider is retained by the employer, the rehabilitation practitioner or provider shall, within [ninety] **ten** days:

(1) Conduct an initial consultation with the injured employee, the employer and all treating physicians; and

(2) Perform a vocational rehabilitation assessment which shall include a plan if rehabilitation services are deemed to be required. A copy of the vocational rehabilitation

plan shall be sent to the employer, insurer, employee, their representatives, the treating physicians and to the division.

2. The employer may retain a rehabilitation practitioner or provider who shall perform the services stated in subdivisions (1) and (2) of subsection 1 of this section, in the event of an injury of sufficient severity as determined by the treating physician, which interferes with occupational functioning that involves:

(1) The severe mangling, crushing, amputation or nerve impairment of a major extremity;

(2) A traumatic injury to the spinal cord that has caused or may cause paralysis or severe restriction of movement;

(3) Severe burns;

(4) A serious head injury with neurological or neuropsychological involvement; or

(5) Loss of sight in one or both eyes or loss of communication skills to include loss of hearing in both ears or loss of speech, or both.

3. The director shall immediately notify the employer that an injured employee may require the services of a rehabilitation practitioner or rehabilitation provider if he receives a surgeon's report and other medical reports supplied by the employer or employer's insurer that details an injury of sufficient severity as described in this section.

4. The initial period of a plan may not exceed a period of twenty-six weeks, but only the [employer] **director** may extend the period of the plan for **such** an additional [twenty-six-week] **time period that is reasonable**. Any extension shall be consistent with the initial plan and limited to no greater goal than restoration of the employee to suitable, gainful employment **at comparable wage**. [The maximum costs for implementing the vocational testing, vocational rehabilitation plan, or subsequent tuition or retraining shall not exceed five thousand dollars, exclusive of the costs of medical treatment, medical evaluation and fees paid to the vocational rehabilitation provider or practitioner, without the approval of the division.]

5. If rehabilitation services require residence at or near the facility, institution or practitioner's office and away from the employee's customary residence, reasonable and necessary costs of board, lodging and travel shall be borne by the employer or insurer. Rehabilitation services shall be performed by practitioners and providers approved by the director within this state when such facilities or practitioners are reasonably available, or elsewhere when approved by the director.

287.149. 1. Temporary total disability or temporary partial disability benefits shall be paid throughout the rehabilitative process.

2. The permanency of the employee's disability under sections 287.170 to 287.200 shall not be established, determined or adjudicated while the employee is participating in rehabilitation services.

3. Refusal of the employee to accept rehabilitation services or submit to a vocational rehabilitation assessment as deemed necessary by the [employer] **director** shall result in a fifty percent reduction in all disability payments to an employee, including temporary partial disability benefits paid pursuant to section 287.180, for each week of the period of refusal.

287.160. 1. Except as provided in section 287.140, no compensation shall be payable for the first three days or less of disability during which the employer is open for the purpose of operating its business or enterprise unless the disability shall last longer than fourteen days. If the disability lasts longer than fourteen days, payment for the first three days shall be made retroactively to the [claimant] **employee**.

2. Compensation shall be payable as the wages were paid prior to the injury, but in any event at least once every two weeks. If an injured employee claims benefits pursuant to this section, an employer may, if the employee agrees in writing, pay directly to the employee any benefits due pursuant to section 287.170. The employer shall continue such payments until the insurer starts making the payments or the claim is contested by any party. Where the claim is found to be compensable the employer's workers' compensation insurer shall indemnify the employer for any payments made pursuant to this subsection. If the employee's claim is found to be fraudulent or noncompensable, after a hearing, the employee shall reimburse the employer, or the insurer if the insurer has indemnified the employer, for any benefits received either by a:

- (1) Lump sum payment;
- (2) Refund of the compensation equivalent of any accumulated sick or disability leave;
- (3) Payroll deduction; or
- (4) Secured installment plan.

If the employee is no longer employed by such employer, the employer may garnish the employee's wages or execute upon any property, except real estate, of the employee. Nothing in this subsection shall be construed to require any employer to make payments directly to the employee.

3. Where weekly benefit payments [that are not being contested by the employer or his insurer] are due, and if such weekly benefit payments are made more than thirty days after becoming due, the weekly benefit payments that are late shall be increased by ten percent simple interest per annum. Provided, however, that if such claim for weekly compensation is contested by the employee, and the employer or his **or her** insurer have not paid the disputed weekly benefit payments or lump sum within thirty days [of when the administrative law judge's order becomes final, or from the date of a decision by the labor and industrial relations commission, or from the date of the last judicial review, whichever is later] **after becoming due**, interest on such disputed weekly benefit payments or lump sum so ordered, shall be increased by ten percent simple interest per annum beginning thirty

days [from the date of such order] **after becoming due**. [Provided, however, that if such claims for weekly compensation are contested solely by the employer or insurer, no interest shall be payable until after thirty days after the award of the administrative law judge.] The state of Missouri or any of its political subdivisions, as an employer, is liable for any such interest assessed against it for failure to promptly pay on any award issued against it under this chapter.

4. Compensation shall be payable in accordance with the rules given in sections 287.170, 287.180, 287.190, 287.200, 287.240, and 287.250.

5. The employer shall not be entitled to credit for wages or such pay benefits paid to the employee or [his] **employee's** dependents on account of the injury or death except as provided in section 287.270.

287.170. 1. For temporary total disability the employer shall pay compensation for not more than four hundred weeks during the continuance of such disability at the weekly rate of compensation in effect under this section on the date of the injury for which compensation is being made. The amount of such compensation shall be computed as follows:

(1) For all injuries occurring on or after September 28, 1983, but before September 28, 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to seventy percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(2) For all injuries occurring on or after September 28, 1986, but before August 28, 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to one hundred percent of the state average weekly wage;

(4) For all injuries occurring on or after August 28, 1991, **but before August 28, 2004**, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to one hundred five percent of the state average weekly wage;

**(5) For all injuries occurring on or after August 28, 2004, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid pursuant to this subdivision shall not exceed an amount equal to two hundred percent of the state average weekly wage;**

**(6) For all injuries occurring on or after September 28, 1981, but before August 28, 2004, the weekly compensation shall in no event be less than forty dollars per week;**

**(7) For all injuries occurring on or after August 28, 2004, the weekly compensation shall in no event be less than sixty-six and two-thirds percent of the federal minimum wage in effect as of the date of injury, multiplied by a forty-hour workweek.**

2. Temporary total disability payments shall be made to the [claimant] **employee** by check or other negotiable instruments approved by the director which will not result in delay in payment and shall be forwarded directly to the [claimant] **employee** without intervention, or, when requested, to [claimant's] **employee's** attorney if represented, except as provided in section 454.517, RSMo, by any other party except by order of the division of workers' compensation.

3. The employer shall be entitled to a dollar-for-dollar credit against any benefits owed pursuant to this section in an amount equal to the amount of unemployment compensation paid to the employee and charged to the employer during the same adjudicated or agreed-upon period of temporary total disability.

**4. An employee shall be entitled to continuous employment with the same employer to the occupation engaged in when the injury was sustained, or the injury or disease caused the employee to lose time from work, at the employee's option, when released to do so by the employee's physician as being able to perform the essential functions of such occupation, without reduction in the level of wages and benefits, and without limitation as to the length of time. No Family and Medical Leave Act entitlements or restoration rights, or similar federal or state laws relating to such topic, shall be reduced while the employee is unable to work as a result of an occupational injury or illness.**

287.180. 1. For temporary partial disability, compensation shall be paid during such disability but not for more than one hundred weeks, and shall be sixty-six and two-thirds percent of the difference between the average earnings prior to the accident and the amount which the employee, in the exercise of reasonable diligence, will be able to earn during the disability, to be determined in view of the nature and extent of the injury and the ability of the employee to compete in an open labor market. The amount of such compensation shall be computed as follows:

**(1) For all injuries occurring on or after September 28, 1983, but before September**

28, 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to seventy percent of the state average weekly wage, as such wages are determined by the division of employment security, as of the July first immediately preceding the date of injury;

(2) For all injuries occurring on or after September 28, 1986, but before August 28, 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to one hundred percent of the state average weekly wage;

(4) For all injuries occurring on or after August 28, 1991, **but before August 28, 2004**, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to one hundred five percent of the state average weekly wage;

**(5) For all injuries occurring on or after August 28, 2004, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid pursuant to the this subdivision shall not exceed an amount equal to two hundred percent of the state average weekly wage.**

2. Temporary partial disability payments shall be made to the [claimant] employee by check, or other negotiable instrument approved by the director which will not result in delay in payment.

**3. No Family and Medical Leave Act entitlements or restoration rights, or similar federal or state laws relating to such topic, shall be reduced while the employee is unable to work as a result of an occupational injury or illness.**

287.780. No employer or agent shall discharge or in any way discriminate against any employee for exercising any of [his] **the employee's** rights under this chapter. Any employee who has been discharged or discriminated against shall have a civil action for damages against [his] **the** employer. **The employee shall prove by a preponderance of the evidence that the employer knew, or by the exercise of ordinary care, should have known, that such discharge or discrimination was related to the employee's**

exercise of rights under this chapter.

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